IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2375 OF 2007

Ramesh Ganpatrao Patil ....Petitioner.
V/s
The State of Maharashtra & Ors..... ....Respondents.

Mr.G.N.Salunke, Adv. For the petitioner.

Mr.S.K.Chincholikar, AGP for respondent Nos. 1 to 4.

Mr.R.G.Ketkar, Adv. For respondent Nos. 5A to 5D, 15B(i) to 15(B)(ii), 17A(i), 17(A) 2-1 to 17(A) 2-4, 18A to 18B.

CORAM: A.P.DESHPANDE, J.
31/7/07

PC:

Rule. Rule made returnable forthwith.

Taken up for hearing by consent of both the parties.

The present petitioner is the original defendant and judgment debtor against whom a decree for partition and separate possession has been passed. The decree has been confirmed right upto the Supreme Court. The present writ petition arises out of an order passed by the Sub-Divisional Officer in proceedings under section 54 of Code of Civil Procedure. The decree for partition and separate possession has been sent to the Collector. The Tahsildar passed an order approving the partition and notice came to be issued to parties to put parties in possession of their respective shares. Aggrieved by partition which proposal was accepted by the Tahsildar, the present petitioner filed an appeal before the Sub Divisional Officer and in the said appeal prayed for stay of possession. The Sub Divisional Officer did grant stay but by an order dated 15.12.06 has vacated the stay order. The order of vacation

of stay is non reasoned order which reads thus:

> "Heard learned advocate for the respondent. Stay is vacated. Next date for hearing on 29.12.06."

Learned counsel for the petitioner submits that Sub Divisional Officer acts as quasi judicial authority while deciding the appeal under Maharashtra Land Revenue Code and thus an order passed by him need to satisfy the test of a reasoned order. It is submitted that if stay is jnot granted pending decision of the appeal the petitioner would loose possession and appeal would be rendered infructuous. Per contra learned counsel for the decree-holder submits that the decree holders are denied fruits of the decree passed way back in their favour as judgment debtors are moving different Forums and thereby stalling the execution of decree in one way or the other. I have no iota of doubt in my mind that the decree has to be executed expeditiously and the decree holders cannot be deprived of fruits of decree. Nonetheless, in my view, ends of justice would be met by directing the Sub Divisional Officer to decide the appeal itself as expeditiously as possible and at any rate within a period of one month from today. Learned counsel appearing for respective parties undertake to appear before the Sub Divisional Officer on 22.8.08 and submit that further notices from the Sub Divisional Officer be dispensed with. At this stage learned counsel for the respondent-decree holder on instructions from instructing advocate states that the appeal is already argued before the Sub Divisional Officer and what remains is only passing of an order. In this view of the matter I allow writ petition, quash and set asside the order passed by the Sub Divisional Officer dated 15.12.06, continue ad-interim order passed by this Court on 4.4.07 till the decision of the appeal by the Sub Divisional Officer. If Sub Divisional Officer has not heard the appeal he shall hear the appeal on 22.8.07 on which date parties would be appearing before him and if Sub

Divisional Officer has already heard the appeal, he shall ensure that the judgment is delivered in the appeal and the appeal is disposed of within one month from today. Learned counsel for the decree-holder has made a grievance that judgment-debtors are trying to alienate the property pending execution of decree. He has placed on record extracts of public notice proposing sale of property and an order is sought restraining judgment debtor from alienating suit property and or from creating third party interest therein. Cuttings of public notices are taken on record and marked `X' for identification. Judgment-debtors are restrained from alienating and/or creating third party interest in the suit property till the execution of decree for partition and separate possession. Rule made absolute in above terms. Parties to act on authenticated copy of this order.

31.7.07